JIM D. WILLS, REGGIE N. WILLS

IBLA 91-12, 91-280 Decided May 11, 1992

Appeals from decisions of the California State Office, Bureau of Land Management, affirming decisions issued by the Folsom Resource Area Manager, requiring a reclamation bond and finding noncompliance with a provision of mining plan of operations 3809/CAMC 148792.

Affirmed in part as modified; bond appeal dismissed.

1. Mining Claims: Generally--Mining Claims: Plan of Operations

   A notice that there was noncompliance with a mining plan of operations is affirmed where the record establishes that construction materials were stored contrary to a provision of the plan that prohibited outside storage.

2. Administrative Procedure: Adjudication--Appeals: Generally--Rules of Practice: Appeals: Dismissal--Mining Claims: Generally--Mining Claims: Plan of Operations

   An appeal from an order establishing a reclamation bond for a mining operation becomes moot if, during appeal, the plan expires or is modified.

APPEARANCES: Jim D. Wills and Reggie N. Wills, Mariposa, California, pro sese.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On May 9, 1990, the Folsom, California, Resource Area Manager, Bureau of Land Management (BLM), issued a notice of noncompliance to Jim D. Wills and Reggie N. Wills for failure to amend mining plan of operations 3809/CAMC 148792 to conform to operations conducted outside the scope of the existing plan. Issuance of the notice was appealed to the California State Office, BLM, where the Director affirmed the Area Manager's action by decision dated August 8, 1990. The appeal of the decision to this Board was docketed as IBLA 91-12. Subsequently, on February 7, 1991, the State Director required appellants to post a reclamation bond in the amount of $2,000 for operations conducted under the same mining plan of operations,

thereby reducing by half the amount of the bond previously set for operations under the plan by the Folsom Area Manager on November 9, 1990. The appeal of this decision was docketed as IBLA 91-280. Inasmuch as both of these decisions concern related questions arising from administration of mining plan of operations 3809/CAMC 148792, the appeals are consolidated for decision in the interest of administrative economy.

The notice of noncompliance was issued to appellants when they began to store construction materials consisting of a dismantled "cabin, gas cook stove, wood * * * stove, fiberglass shower stall, and other items sufficient to construct a residence on your mill site" (Decision dated Aug. 8, 1990, at 1). Affirming the prior decision by the Area Manager that found this activity was "unnecessary, undue degradation" of public land, the State Director found, citing 43 CFR 3809.1-7, that the storage of this quantity of construction material was a "significant modification" of the plan of operations that "must be reviewed and approved by the authorized officer in the same manner as the original plan." Id. Since there had been no application by appellants to amend their plan to permit the storage of construction material as alleged, and because the presence of the material was otherwise unexplained in terms of their existing plan, the notice of noncompliance was affirmed. Id. On review, we affirm this finding by the State Director.

Appellants argue that storage of the materials was not in violation of "any Federal mining law or regulation" and that their operations are "in compliance with all 'applicable' State and county codes." (Emphasis in original.) They contend BLM lacks authority to issue a notice of noncompliance for the conduct described. In a supplemental statement of reasons filed with this Board on September 17, 1990, appellants point out that BLM was unable to obtain a Federal court judgment concerning the disposition of the building materials deposited on their claims, contrary to an assertion in the decision that there had been such a judgment. Appellants have not provided a copy of the judgment. Moreover, they do not allege that the Federal court ruled on the question whether there had been a deviation in practice from their plan of operations. The alleged judgment does not, therefore, appear to be directly relevant to this appeal.

The plan of operations filed by appellants imposed limitations on both construction and storage of materials on their claims. In a modification to their 1986 plan filed on March 14, 1986, appellants agreed that:

> Occupation will be limited to a house trailer. No plastic shacks or additions to the trailer will be constructed other than an awning. A tool shed may be erected. All equipment, tools, and personal belongings will be stored out of sight. * * * It is understood that Federal, State, and local laws and regulations must be met, and that failure to follow this plan of operations will result in the issuance of a notice of noncompliance.

Sketch maps provided by appellants with modifications of their plan of operations made in 1986 show the presence on their claims of a trailer,

tool shed, and tent. No other changes concerning surface occupancy were approved prior to issuance of the decisions here under review.

[1] On the record before us, therefore, it appears that mining plan of operations 3809/CAMC 148792 did not permit the erection of more build-ings or improvements than were already in existence on March 14, 1986. The plan prohibited storage of materials, except for materials allowed to be kept inside the permitted buildings. And the plan acknowledged, in conformity to Departmental regulations at 43 CFR Subpart 3809, that issuance of a notice of noncompliance would follow "failure to follow this plan of operations."

Photographs submitted by BLM with the case file indicate that some materials were not stored in the buildings as required by the plan of operations. The State Director determined that collection of construction materials on the claims required submission by appellants of an amendment to the existing plan, and found that this failure to amend and to report the change in their operations was a "significant modification" of the plan. Appellants admitted that the materials had been collected on their claims, but argued that their actions were otherwise within lawful limits imposed by State and Federal law and requested a hearing on the issue.

The Board may order a fact-finding hearing in cases where there is an issue of material fact relevant to an issue in dispute that cannot otherwise be resolved. Ben Cohen (On Judicial Remand), 103 IBLA 316 (1988). A hearing is not required, however, if, even assuming that the allegations made on appeal are shown to be correct, there is no remedy that can be afforded on the record so established. Id. This is such a case, inasmuch as appellants have not denied that their actions were inconsistent with their plan of operations, but instead contend that they were otherwise not contrary to law. Accordingly, the request for hearing is denied.

Appellants argue that because the storage of materials on their claims was not found to be in violation of local zoning laws and regulations that the decision finding their conduct to be contrary to their mining plan of operations was "arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence and is not according to law." This argument overlooks the limitations imposed on their operations by their mining plan of operations. Their arguments do not address the finding by the State Director that their conduct was contrary to the terms of the plan. The record before us, however, adequately supports a finding that the plan did not permit storage of materials of any kind outside the permitted structures and that there was an accumulation of such materials on the claims. To the extent that the Director's decision relied on a belief that this storage was also a violation of some unspecified State or local rules it is not supported on the record before us: however, the State Director clearly found that the storage was contrary to the plan of operations then in effect. This finding is affirmed. The finding that the storage of materials also was contrary to local law is disapproved.

[2] Events alleged by appellants to have occurred on January 29, 1991, make the question whether they should be required to provide a $2,000 reclamation bond academic, for appellants now argue that their mining operations under the 1986 mining plan of operations 3809/CAMC 148792 were terminated on January 29, 1991, when all their possessions, including the building materials described above, were removed by BLM from the claims covered by the 1986 plan here under review. Appellants conclude, at page 2 of the statement of reasons filed on March 22, 1991, that this action "would expose the Bureau * * * to civil liability." They state that, as a consequence, "we have not mined or even visited our mining claims since the 29th of January 1991." Since this Board cannot determine questions of civil liability, such as appellants now state are at issue, this aspect of their case, looking to civil damages for the removal of their possessions from their claims, is beyond the authority of this Board to adjudicate. B. H. Northcutt, 75 IBLA 305, 307 (1983).

Concerning the Director's decision that reduced the reclamation bond for mining plan of operations 3809/CAMC 148792 from $4,000 to $2,000, appellants argue that, while the requirement that they post a reclamation bond "may be reasonable," they nonetheless refuse to furnish any bond "without Federal Court involvement" because of the unauthorized removal of their property from the claims. Court documents appearing in the case file indicate that an action was commenced by BLM in the United States District Court for the Eastern District of California against appellants, alleging unlawful use and occupancy of public land. United States v. Jim D. Wills & Reggie N. Wills, Cr. No. 91-032 (filed E.D. Cal. Mar. 6, 1991). In a statement of reasons filed March 22, 1991, appellants explain that

> we do NOT have a mining operation. On Jan. 29, 1991, [the State Director] directed his subordinates to completely destroy our mining operation, in violation of 30 U.S.C. § 612(B) which prohibits the United States from endangering or materially interfering with prospecting, mining, or processing operations or uses reasonably incident thereto. Under [the Director's] orders 30 or more Bureau of Land Management (BLM) employees from different parts of the State of California tore down our location notices. In violation of State and Federal law, gates and signs that were in place to protect the public were destroyed or removed from our mill site claims (43 CFR 3809.3-5). Our water system was destroyed, $30,000.00 dollars (sic) of our mining equipment, tools, and accessories were either destroyed or removed from our mill site claims, our trailers and storage buildings were broken into and searched, destroyed, and removed from our mill sites. Iron used to build mining equipment was removed, automobiles were broken into, searched and removed from our millsites. Gold was stolen, black sand concentrates was seized, about 30 law books was seized or destroyed. Our mining operation has been completely destroyed. [Emphasis in original.]

Id. at 1, 2. On January 24, 1992, this Board permitted the parties to supplement the record by furnishing copies of the mining plan of operations and all modifications of the plan. The order recited that:

If there was a modification of the plan, a copy of the modification should be included [in the documents to be furnished]. The record furnished contains a document dated Jan. 23, 1991, entitled "interlocutory decision" that indicates a 1986 mining plan of operations would be rescinded in 30 days. If this proposed action were taken, and if the 1986 plan is the plan relevant to the bond reduction decision, a copy of the recision document should also be furnished.

While appellants did not furnish any documents in response to this order, BLM supplied a copy of a State Director's decision dated July 30, 1991, that modified mining plan of operations 3809/CAMC 148792 by prohibiting "permanent camps" and limiting mining operations to suction dredging under limited conditions as to time, place, and equipment, and requiring appellants to post a reclamation bond (see Modified Plan of Operations 3809/CAMC 148792 1991, at 1, 2). Coincident with issuance of this decision, which does not appear to have been appealed, the Area Manager issued a decision, also dated July 30, 1991, that established a reclamation bond for the modified plan of operations on appellants' claims in the amount of $1,000. There does not appear to have been an appeal from this action either.

BLM has furnished copies of statements compiled on November 7, 1990, showing the estimated cost to the Department for reclamation of claims to be $4,086 (itemized statement compiled by Timothy J. Carroll, Folsom-BLM, November 7, 1990). According to the statement furnished by BLM, approximately 3 acres that were disturbed by the camp established by appellants on their claims have been reclaimed and equipment and material removed. The decision of the State Director dated July 30, 1991, explains that

> previous operations conducted under your Plan of Operations 3809/CAMC 148792 have caused unnecessary and undue degradation to the public lands in the vicinity of Willow Placer Campground in Merced River Canyon, Mariposa County, California. I have decided that you may continue mining operations in this area only according to the terms of the modified plan.

The record before us establishes, therefore, that none of the property described by the plan of operations or the notice of noncompliance remains on the claims. It is the contention of appellants that the claims have been entirely reclaimed, and, while they continue to hold them, that the only use now allowed amounts to casual use that does not require a bond. See 43 CFR 3809.1-9(a). BLM takes the position that if dredging operations by appellants are to continue they must conform to the plan of operations as modified by the State Director on July 30, 1991.

The reclamation bond decision of February 7, 1991, which raises the remaining question now before us, stated:

> It is the policy of BLM to require a reclamation bond for all plan-level operations. For your mining operation, the bond amount is the actual reclamation costs as determined by the BLM

> or $2,000.00 per acre, whichever is less. One (1) acre is considered the smallest increment for bond calculations. The estimated cost of reclaiming your occupancy site is $4,000.00. However, since your site does not exceed one (1) acre of disturbance, your bond is determined to be $2,000.00.

(Decision dated Feb. 7, 1991, at 1). This amount was reduced, however, by the July 30, 1991, decision.

Therefore, whether, as BLM contends, the plan of operations has been modified by the decision issued July 30, 1991, or if, as appellants con-tend, actions taken by BLM on January 29, 1991, terminated their plan of operations, the same conclusion is reached so far as the bond question is concerned: appellants are no longer required to furnish a $2,000 reclamation bond to comply with the decision of Febrary 7, 1991, here under review. As a consequence, any decision we might issue concerning the effect of this requirement would afford them no relief. Under such circumstances, we have no choice but to dismiss the bond appeal now pending before us. See Blackhawk Coal Co. (On Reconsideration), 92 IBLA 365, 369, 93 I.D. 285, 287 (1986); Utah Wilderness Association, 91 IBLA 124, 130 (1986). Any questions raised by the July 30, 1991, approval of the modified plan of operations and the requirement established by that modified plan for a reclamation bond or by the $1,000 bond required thereafter are not now before us, those actions not having been appealed.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision affirming the notice of noncompliance is affirmed as modified and the appeal from the decision requiring a $2,000 reclamation bond to be posted is dismissed.

Franklin D. Arness
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge